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9 January 19853 CBS Opens Libel Trial Defense, Asserts
Vietnam Documentary Was True

By M. A. FARBER

Lawyers for CBS yesterday opened their defense of a disputed 1982 documentary on the Vietnam War, saying they would prove both that it was true and that the people who made it believed it was true.

For 13 weeks, the documentary — "The Uncounted Enemy: A Vietnam Deception" — has been the subject of a \$120 million libel trial brought against the network and three other defendants by Gen. William C. Westmoreland, commander of American forces in Vietnam from 1964 to 1968.

At 10:30 A.M. yesterday, Dan M. Burt, the general's lawyer, rested the case for the plaintiff. The evidence, he told an intent jury in Federal District Court in Manhattan, controverted "what the broadcast said — that William Westmoreland deliberately deceived his superiors about the size of the enemy in Vietnam" in 1967.

"There was no suppression," Mr.

Burt said in a five-minute interim summation. "No deception."

Seconds later, David Boies, the principal lawyer for CBS, stressed that only General Westmoreland's witnesses — 19 in all — had testified so far.

"We are starting the defendants' case," he told the jury with a trace of a smile, "and I would probably be overly optimistic if I promised you light at the end of the tunnel quite yet.

"I think you will be convinced — perhaps you are on the way now — I think you will certainly be convinced by the end of our case that this broadcast was true," Mr. Boies said. "But independent of that, I think there can simply be no doubt that the CBS people who put this broadcast together believed it was true and had awful good reason to believe it was true."

To prevail in his suit, Mr. Boies iterated, General Westmoreland must establish not only that the documentary was false but also that CBS knew that or acted with "reckless disregard" for whether it was true. The burden of proof is on the plaintiff.

General Westmoreland contends that CBS defamed him by saying he had purposely misled President Johnson and the Joint Chiefs of Staff about the strength and nature of the North Vietnamese and Vietcong in the year before the Tet offensive of January 1968. The CBS broadcast alleged a "conspiracy" by the General's command to "alter and suppress" the true data.

Apart from CBS, the defendants in the case are George Crile, the producer of the documentary; Mike Wallace, its narrator, and Samuel A. Adams, a former C.I.A. analyst who was a paid consultant to the network.

Judge Instructs Jury

Judge Pierre N. Leval — pacing the area behind his bench, his hands in his pockets — reminded the jurors yesterday of his instructions to "keep an open mind" throughout the trial and not to allow any "tentative" conclusions to harden prematurely.

"All right, Mr. Boies," Judge Leval said. "Your first witness."

Mr. Boies began the defense case by reading portions of the depositions of two witnesses who will not appear in person. They are Joseph Zigman, the associate producer of the documentary, and Dwain R. Gatterdam, a senior analyst for the C.I.A.

Mr. Zigman, who retired from CBS after 20 years following the broadcast in January 1982, said in his deposition that he had asked to be Mr. Crile's assistant on the project.

"I knew he was trustworthy, honest, a good reporter," Mr. Zigman said. Randy Mastro, a lawyer for CBS, asked Mr. Zigman whether he had changed his view of the producer during the making of the documentary.

"Not one bit," Mr. Zigman said.

On Monday, Ira Klein, the chief film editor for the broadcast, testified he had complained to Mr. Zigman about the validity of the program when it was being assembled in late 1981. But Mr. Zigman, in his deposition last February, said Mr. Klein was "just sort of worn out" by that stage. He himself could recall no complaints beyond those that he said were natural to any major film project.

"No one," Mr. Zigman said, challenged the "accuracy" of the documentary. There were times when individual points were questioned, he said, but "there was always the possibility of going back to the material that was available to us at the office and just clarify it, substantiate it. There was never at any time anything that was going to go into the broadcast or went into the broadcast that could not be substantiated and verified by some existing piece of paper."

Mr. Zigman described Mr. Adams — whom Mr. Burt has sought to depict as "obsessed" — as "cooperative" and "reliable."

Mr. Adams — whose research over 15 years was crucial to CBS — was also praised by Mr. Gatterdam when he

gave his deposition last October. Mr. Gatterdam, who had worked with Mr. Adams at the C.I.A. in 1968, said Mr. Adams was "meticulous and highly competent."

Moreover, Mr. Gatterdam said, he shared Mr. Adams's view that the military in Saigon had imposed an "arbitrary ceiling" of 300,000 on enemy strength in 1967; that the C.I.A. had mistakenly "caved in" to the military's position, and that, according to analyses by the C.I.A. after the Tet offensive, North Vietnamese infiltration in the fall of 1967 "averaged" 20,000 a month, four times the figure carried in official military records.

Because the military was "trying to show progress" in the war, Mr. Gatterdam said, it "ignored" much evidence that the enemy was "replenishing their forces" for the offensive.

Before he rested General Westmoreland's case, Mr. Burt read to the jury part of a letter Mr. Crile had sent Mr. Wallace around June 1982 in which Mr. Crile said he produced "the documentary I promised" — a work, he said, more carefully grounded than any "print piece dealing with such an important matter" that he had ever seen.

In his interim summation, Mr. Burt argued that General Westmoreland's superiors — as well as Mr. Adams and his C.I.A. colleagues — were given all the numbers on enemy size in 1967. That view, he said, was supported by contemporaneous documents introduced into evidence — documents, he said, that "don't lie."

Mr. Boies said he agreed that documents "capture forever the truth." And what they showed at this trial, he said, was that the military acted in 1967, not from legitimate reasons, but from "political" motivation.

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General concludes case against CBS

J By David Zucchino
Inquirer Staff Writer

NEW YORK — An attorney for Gen. William C. Westmoreland concluded his libel case against CBS yesterday with a pointed appeal to the jury. Just moments later, a CBS attorney began the network's case with his own entreaty to the jurors.

On the 45th day of testimony in a trial that is now 13 weeks old, Westmoreland attorney Dan Burt summed up the \$120 million libel suit with a tribute to the general's integrity. CBS attorney David Boies immediately followed with the opening of a defense that will last for several weeks.

"There was no suppression, no deception," Burt said, telling the jury that a 1982 CBS documentary said Westmoreland had "deliberately deceived his superiors about the size of the enemy in Vietnam." Burt told the jury to remember that 18 former military intelligence officers and government officials had testified on behalf of Westmoreland. The men, in sometimes vehement terms, generally supported Westmoreland's version of events.

"Eighteen men came from all over this country ... and subjected themselves to cross-examination to testify that they believe that Gen. Westmoreland did not deceive his superiors," Burt said. "Eighteen men took the time, risked their reputations and their dignity ... so that you could learn firsthand what had taken place."

Addressing the jury directly in one of the unique interim summations permitted both sides by the trial judge, Burt reminded the jurors of two 1967 military documents he had introduced. The jury has seen hundreds of pages of documents during testimony that has stretched over 6,481 transcript pages.

One document, Burt said, proved that one of the commanders whom the documentary said Westmoreland had deceived was in fact present at a Saigon meeting at which key intelligence reports were discussed. The second document, Burt said, refuted a key CBS allegation that Westmoreland had imposed an arbitrary "ceiling" of 300,000 on the number of enemy troops his intelligence officers could report.

"Remember, memory is fallible," Burt said. "... But documents don't lie."

Boies, passing Burt in front of the jury box, quickly reminded the jurors "of what Mr. Burt says about documents being forever and the fallibility of human memory."

Boies then rattled off a list of books, reference materials, interviews and a congressional investigation

that CBS said it relied on in preparing *The Uncounted Enemy: A Vietnam Deception*. "I think there can be simply no doubt that the CBS people who put this broadcast together believe it was true and had awful good reason to believe it was true," Boies said.

Boies reminded the jurors that under libel law, Westmoreland must prove not only that the broadcast was false, but also "that CBS at the time that it did the broadcast believed it was false or was acting recklessly, disregarding whether it was true or false."

He went on: "CBS certainly wasn't disregarding whether it was true or false. It conducted 80 interviews, spent over a year, accumulated thousands of documents."

Boies also said Westmoreland's own witnesses had testified that the general had imposed a "command position" that estimates of enemy strength could not exceed 300,000. "You didn't hear that from a CBS witness," he said.

Westmoreland himself, Boies told the jury, had testified that his command position was "politically motivated, that they (Westmoreland and his commanders) were concerned about the political consequences."

Earlier, Burt offered as his final piece of evidence a letter written in June 1982 by George Crile, the producer of the documentary and a defendant in the suit.

Crile wrote to CBS correspondent Mike Wallace, another co-defendant, that he had dealt successfully with "the unusual and awkward relationship" posed by defendant Samuel A. Adams, a former CIA analyst who was a paid consultant for the broadcast.

Later, Boies read into the record sworn depositions by two witnesses: Joseph Zigman, an associate producer for the broadcast; and Dwain R. Gatterdam, a CIA analyst on Vietnam intelligence in 1968.

In his deposition, Zigman contradicted testimony Monday by former CBS film editor Ira Klein that Klein had complained to Zigman and Crile about serious flaws in the broadcast. "No one had ever complained to me about the way the show was being produced," Zigman testified. He added that Crile was "trustworthy, honest, a good reporter."

Gatterdam, who analyzed enemy strength in early 1968, said he concluded then that Westmoreland's command had underreported the size of the enemy by 150,000 to 200,000 men.

Gatterdam, who said Adams was a "thorough and meticulous" analyst, added that he believed Westmoreland's command had imposed an "arbitrary ceiling" on troop strength.

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